IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 1151 of 1990

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

M N PARMAR

Versus

DY. COMMISSIONER OF POLICE

Appearance:

MR SN MEHTA for GIRISH PATEL for Petitioner

MR SP HASURKAR for Respondent No. 1

MR VM PANCHOLI AGP for Respondent No. 2

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 03/02/2000

ORAL JUDGEMENT

Heard the learned advocates.

The petitioner before this court was appointed as an Armed Police Constable in or around the year 1980. In

the year 1984, he had asked for casual leave for three days with effect from 9th May, 1984 after office hours. On expiry of the period of leave, he was supposed to report for duty on 15th May, 1984, however, he failed to do so and did not report for duty till 27th March, 1985, and until after a notice under section 145 of the Bombay Police Act was issued to him. After reporting for duty, he produced a medical certificate for part of the period he was absent from service. The period of his absence i.e. 316 days was later on regularised as leave without pay. On 23rd September, 1988, a chargesheet was issued upon the petitioner in respect of his absence of 316 days without leave. The said chargesheet was replied to by the petitioner. Since he did not admit his guilt, the disciplinary action was initiated against him. In course of the disciplinary action, he first sought time for engaging a next friend to represent him. However, inspite of several opportunities being granted to him, he did not engage a friend. On 10th January, 1989, he gave a writing to the Inquiry Officer admitting the imputation of charge made against him and expressed his desire not to contest the disciplinary action, but prayed for leniency. Relying on the said statement, the Inquiry Officer held the imputation of charge to be proved. In view of the charge proved against the petitioner, on 31st March, 1989, a notice was issued upon him to show cause why he should not be removed from service. The said notice was answered by the petitioner on 22nd April, 1989. The disciplinary authority under its order dated 30th June, 1989, directed that the petitioner be removed from service. The said order was confirmed in appeal by the appellate authority on 31st August, 1989. The revision preferred before the Government was dismissed as time-barred. Feeling aggrieved, the petitioner has preferred the present petition.

It is submitted that the petitioner having fallen ill had received medical treatment at Ahmedabad and the medical report was forwarded by him to the concerned Officer. Further, for the remaining period of his absence, he had produced a medical report in the month of March 1985 when he resumed the service. Besides, the period of absence has been regularised as an extra ordinary leave without pay. In that view of the matter, the cause of action would not survive, and no disciplinary action could have been initiated against the petitioner. It is further contended that the inquiry is grossly belated in as much as though the cause of action arose in the year 1985, the inquiry had not been initiated until the year 1988. This delay itself should vitiate the whole inquiry. It is next contended that the

statement given by the petitioner on 10th January, 1989, was obtained under duress and by mis-representation. The said statement being involuntary, could not have been relied upon either by the Inquiry Officer or by the disciplinary authority. The finding of guilt based on the said statement is also vitiated. He submitted that this contention was taken by the petitioner even in his reply to the show cause notice dated 31st March, 1989, however, the same has not been considered by the disciplinary authority. Even if the petitioner had given such a statement voluntarily, in view of paragraph 448 (a) of the Bombay Police Manual, 1959, no finding of guilt could have been based on such statement. In any view of the matter, the punishment imposed upon the petitioner is shockingly disproportionate and unless a loss or prejudice was caused to the respondents on account of the absence of the petitioner, such harsh punishment could not have been imposed upon the petitioner. Further, while imposing the punishment upon the petitioner, the disciplinary authority has also taken into consideration the past service record of the petitioner. No reference to the past service record of the petitioner had been made in the show cause notice dated 31st March, 1989, and the same could not have been relied upon without the petitioner being given an opportunity to meet the same. Thus, the disciplinary authority has, while imposing the punishment, taken extraneous matter into consideration. The order of punishment, therefore, shall be held to be null and void. In support of his contention, Mr. Mehta has relied upon the judgments of the Supreme Court in the matters of STATE OF PUNJAB & ORS Vs. BAKSHISH SINGH [(1998) 8, SCC 222)], and of B.C. CHATURVDEDI Vs. UNION OF INDIA & ORS. [(1995) 6 SCC, 749)].

The petition is contested by the respondents. It is submitted that the inquiry has been conducted against the petitioner in consonance with the relevant rules and the principles of natural justice. Further, in exercise of its power of judicial review under Article 226 of the Constitution of India, this court ought not to sit in appeal over the finding of guilt recorded by the disciplinary authority, nor would the court interfere with the quantum of punishment unless it is shockingly disproportionate. Considering the nature of guilt and his past conduct and petitioner being a member of the Armed Police Force, the punishment imposed can not be said to be disproportionate or harsh in any manner. Mr. Pancholi also has relied upon the above referred judgment in the matter of B.C. Chaturvedi. He has also relied upon the judgment of the Supreme Court in the matter of

INDIAN OIL CORPORATION LTD Vs. ASHOK KUMAR ARORA [(1997) 3 SCC, 72].

In the matter of Bakshish Singh (supra), the court was considering the order of remand made by the lower appellate court. The Hon'ble Supreme Court found that the lower appellate court having held that the cause of action did not survive, was not right in remanding the matter on the adequacy of punishment. In the said matter, the delinquent was tried for remaining absent from service after the period of absence was regularised as a period of leave. The court held that, `the period of absence from duty having been regularised and converted into leave without pay, the charge of absence from duty did not survive.' This was the view expressed by the court below. The Hon'ble Supreme Court has not expressed any opinion in the above referred matter. As observed hereinabove, the court confined itself, inter alia, to the point that the order of the lower appellate court was contrary to the finding recorded by it. Therefore, in my view, it can not be said to be an opinion of the Hon'ble Supreme Court. Speaking for myself, I can not agree with the view expressed by the lower appellate Court in the aforesaid matter. It is well known that if a Government servant remains absent from service, such absence under Rule 250 of the Bombay Civil Services Rules shall amount to interruption of service. An interruption of service shall entail cancellation of all duty counting for pension. If the period of absence of a Government servant were treated as such, all previous service rendered by such a servant would stand cancelled for the purpose of pension. It is only with a view to avoiding such drastic consequence befalling a delinquent, the period of absence is generally regularised against the leave due or as an extra ordinary leave without pay. In my view regularisation of period of absence, in any manner as aforesaid, is a mere administrative action and it does not wipe off the factum of delinquency i.e. the Government may still take a disciplinary action against the Government servant concerned for such delinquency. In the matter of B.C.Chaturvedi (supra), the Hon'ble Supreme Court after considering its previous judgments has culled the principles in respect of the court's power of judicial review and the interference with the quantum of punishment. Mr. Mehta has therefor relied upon the observations made by the Court in paragraphs-17 and 18 of the said judgment, while Mr. Pancholi has relied upon paragraphs-12 and 13 of the said judgment. The ratio laid down in paragraphs 13 and 18 of the said judgment, read as under :

Para - 13 :-

"The disciplinary authority is the sole judge of facts. Where appeal is presented, the appellate authority has coextensive power to reappreciate the evidence or the nature of punishment. In a disciplinary inquiry, the strict proof of legal evidence and findings on that evidence are not relevant. Adequacy of evidence or reliability of evidence can not be permitted to be canvassed before the Court/Tribunal. In Union of India V. H.C. Goel this Court held at p.728 that if the conclusion, upon consideration of the evidence reached by the disciplinary authority, is perverse or suffers from patent error on the face of the record or based on no evidence at all, a writ of certiorari could be issued. "

Para - 18 :-

A review of the above legal position would establish that the disciplinary authority, and on appeal the appellate authority, being fact finding authority have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court/Tribunal, while exercising the power of judicial review, can not normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof.

Same is the view expressed by the Supreme Court in respect of court's power of judicial review and the penalty in the matter of Indian Oil Corporation Ltd. (Supra).

It is true that the inquiry has been initiated after some delay i.e. though the petitioner had resumed duty somewhere in the month of June, 1985, the disciplinary action has been initiated in the year 1988 i.e. nearly three years after the petitioner resumed the duty. The delay has not been explained either. However, in the facts of the present case, the delay itself should not vitiate the inquiry. Some delay has to be attributed to the lengthy administrative procedure. Absence of the petitioner from duty was a matter of record. The petitioner was not required to rely upon his memory or unrecorded incidents. As I have held hereinabove, even after the period of absence had been regularised against the leave admissible or as extra ordinary leave, the cause of action still survived and the disciplinary authority was justified in initiating the disciplinary action. The statement given by the petitioner on 10th January, 1989, whether was voluntary or not, is a question of appreciation of evidence and the disciplinary authority as well as the appellate authority having considered the same to be voluntary, this court will not be justified in siting in appeal over the said finding or in substituting the said finding. The objection in this respect was taken by the petitioner in his reply to the show cause notice dated 31st March, 1989. The disciplinary authority has also in the impugned order, specifically considered the same. Having considered the said objection, the disciplinary authority in no uncertain terms has held the same to be voluntary. Paragraph 448 (a) of the Bombay Police Manual has been reproduced in the memo of the petition. Mr. Mehta has not explained why he should rely upon the Bombay Police Manual and not the Gujarat Police Manual which is applicable in the State of Gujarat. Besides, there is nothing in the said paragraph 448 (a) which would support the contention of Mr. Mehta. It can not mean that admission, if any, has to be made on the first day of the hearing and the subsequent admission would not absolve the Inquiry Officer from taking the inquiry to its logical end. On the contrary, paragraph 448 (a) provides that, `if the delinquent pleads guilty, their remains only the issue of the order after a brief summery up by the officer competent to inflict punishment'. In the present case, the petitioner was asked to give the name of his next friend, which he failed to do even after four adjournments i.e., on 22nd November, 1988; 2nd December, 1988; 23rd December, 1988; and 2nd January, 1989. Thereafter, on 10th January, 1989, he admitted the charge made against him. Though in his reply dated 22nd April, 1989 to the show cause notice, the petitioner has taken a contention that the aforesaid statement dated 10th

January, 1989, was taken under duress, he has not said a word about assurance of a light punishment. Such contention does not appear to be taken before the appellate authority either. The contention of misrepresentation raised in the present petition appears to be an after-thought and can not be accepted. The petitioner having admitted the imputation of charge made against him, the Inquiry Officer was right in concluding the inquiry and the disciplinary authority was also justified in relying upon the said admission. Even otherwise, the factum of the petitioner's remaining absent from duty is not disputed. The only question was whether he was justified in remaining absent from service. If the petitioner were really sick, he could have informed the authority and could have sent the medical report from time to time. However, he failed to do so. Upon perusal of the records, I find that what the petitioner did was he gave a medical certificate issued on 26th March, 1985 for the period from 1st June, 1984 to 25th March, 1985. It is not known what was the ailment the petitioner was suffering from which kept him away from service for such a long time continuously. In my view, such a medical certificate issued for a long period, at the end of such period, can not be said to be reliable. The disciplinary authority was fully justified in not relying upon the same.

That takes me to the last question of the quantum of punishment. As held by the Hon'ble Supreme Court in the matter of B.C.Chaturvedi (supra), it is only in exceptional cases where the court feels that the punishment imposed is uncoscionably disproportionate , the court should interfere with the same. In the present case, it should be born that the petitioner was an Armed Police Constable. Being a Police Officer, he was expected to have better sense of discipline and of responsibility than the ordinary citizen and more so being a Member of the Armed Police Force. Whether the absence of such Police Officer caused any loss or inconvenience to the Department are hardly the matters which require to be considered. Even if no such loss is suffered, the indisciplined behaviour of the petitioner is sufficient to warrant an order of removal. Unless such actions were taken, the disciplinary authority would not be in a position to maintain discipline. In my view, therefore, the order of removal from service can not be said to be so improper and unjust so as to warrant interference by the court. As regards the past conduct of the petitioner, it is true that the show cause notice dated 30th March, 1989, does not refer to the said conduct. However, it is equally true that the said past

conduct was not intended to be taken into consideration by the disciplinary authority. The reference to the past conduct in the order of punishment has been made in answer to the contention raised by the petitioner. In reply to the show cause notice, the petitioner had adverted to his service record, which according to him, was satisfactory and without any blot. While considering the contention raised by the petitioner, the disciplinary authority had found that not only the petitioner's past service record was far from satisfactory, but it was not blotless either. It is observed that in 9 years' service, on 8 occasions, the petitioner had remained absent from service without prior leave or intimation. The disciplinary authority has also categorically observed that while imposing the penalty, the past conduct was not taken into consideration. However, since the petitioner had adverted to his past service record, the same was perused and the finding was recorded as above. It, therefore, can not be said that the disciplinary authority while imposing the punishment, has relied upon extraneous material as contended.

In view of the above discussion, I see no merit in either of the contentions raised by Mr. Mehta. Petition is dismissed. Rule is discharged. The parties shall bear their own costs.

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JOSHI